

CITY of ALBUQUERQUE

TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S O-21-58 ENACTMENT NO. _____

SPONSORED BY: COUNCILOR BASSAN, by request

1 **ORDINANCE**

2 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
3 NEW MEXICO INDUSTRIAL REVENUE BOND (AFFORDABLE SOLAR PROJECT)
4 SERIES 2021 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,578,000 TO
5 PROVIDE FUNDS TO FINANCE THE ACQUISITION, RENOVATION,
6 DEVELOPMENT, IMPROVEMENT AND EQUIPPING OF A FACILITY FOR A
7 RENEWABLE ENERGY PRODUCTION AND STORAGE TECHNOLOGY
8 RESEARCH AND DEVELOPMENT COMPANY; AUTHORIZING THE EXECUTION
9 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE
10 AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE
11 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN
12 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE
13 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
14 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

15 **WHEREAS, the City of Albuquerque (the “City”) is a legally and regularly**
16 **created, established, organized, and existing municipal corporation of the State**
17 **of New Mexico (the “State”); and**

18 **WHEREAS, pursuant to Sections 3-32-1 through 3-32-16, New Mexico**
19 **Statutes Annotated, 1978 Compilation, as amended (the “Act”), the City is**
20 **authorized to acquire industrial revenue projects located within the corporate**
21 **limits of the municipality for the purpose of promoting industry and trade by**
22 **inducing commercial enterprises to locate or expand in the State of New**
23 **Mexico; and**

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 WHEREAS, pursuant to the Act, the City is authorized to issue revenue
2 bonds for the purpose of defraying the cost of acquiring any project and to
3 secure the payment of such bonds, all as provided in the Act; and

4 WHEREAS, Zia Energy Real Estate, LLC (the “Company”) is a Limited Liability
5 Company organized under the laws of the State of New Mexico and is
6 authorized to do business in New Mexico; and

7 WHEREAS, the Company has requested that the City issue its industrial
8 revenue bond pursuant to the Act for the purpose of providing funds to finance
9 the acquisition, improvement and equipping of facilities within the corporate
10 limits of the City (the “Project”); and

11 WHEREAS, the City Council of the City of Albuquerque (the “Council”) has
12 adopted an ordinance establishing the Albuquerque Development Commission
13 (the “Commission”) to review projects proposed to be financed with an
14 industrial revenue bond pursuant to City Resolution No. 16-1985, as amended;
15 and

16 WHEREAS, the Company has presented to the City and the Commission a
17 proposal (the “Project Plan”) whereby the City shall, pursuant to the Act,
18 acquire certain property and equipment (the “Project Property”) for the purpose
19 of operating facilities at 3900 Singer Blvd., NE, covering at least 3.522 acres
20 including a 29,560 square foot building, for a renewable energy production and
21 storage technology research and development company, within the boundaries
22 of the City, and pursuant to which the City would issue its taxable industrial
23 revenue bond in order to finance the Project; and

24 WHEREAS, the Commission has reviewed the Project Plan, and on April 8,
25 2021, has determined that the Company has complied with City Resolution No.
26 16-1985, and has recommended approval of the Project Plan by the Council;
27 and

28 WHEREAS, under the Company’s Project Plan, the City would enter into an
29 Indenture dated as of May 1, 2021 (the “Indenture”) between the City and a
30 corporate depository satisfactory to the City to be designated at a later date, as
31 depository (the “Depository”), pursuant to which, together with this ordinance

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (the “Bond Ordinance”), the City would issue its bond designated as the City of
2 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Affordable Solar
3 Project), Series 2021 (the “Bond”); and

4 WHEREAS, under the Company’s Project Plan, the City and the Company
5 would enter into a Lease Agreement dated as of May 1, 2021 (the “Lease”),
6 pursuant to which the Company will lease the Project Property from the City
7 and will make payments to the Depository sufficient to pay the principal of,
8 redemption premium, if any, and interest on the Bond, and to pay all other
9 obligations incurred pursuant to the provisions of the Lease and the Bond
10 Ordinance; and

11 WHEREAS, under the Company’s Project Plan, the Lease will provide that the
12 Company shall maintain the Project and carry all proper insurance with respect
13 thereto; and

14 WHEREAS, the proceeds of the Bond shall be used for the purpose of
15 financing the acquisition, improvement and equipping of the Project (the
16 “Financing”); and

17 WHEREAS, the City is authorized to enter into the Lease, the Indenture, and
18 other related documents and to issue the Bond pursuant to the Act and the
19 Bond Ordinance; and

20 WHEREAS, the Bond in an aggregate principal amount not to exceed
21 \$7,578,000 will be issued, sold, and delivered by the City in a private sale to an
22 affiliate of the Company (the “Purchaser”) pursuant to a bond purchase
23 agreement (the “Bond Purchase Agreement”) among the City, the Company,
24 and the Purchaser; and

25 WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the
26 Project and to pay certain costs associated with the transaction; and

27 WHEREAS, after having considered the provisions of the Project Plan and the
28 Financing, the Council has concluded that it is in the best interest of the City to
29 authorize the issuance of the Bond to finance the Project, and that the City’s
30 issuance of the Bond shall constitute a valid public purpose under the Act; and

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 WHEREAS, the Council has been advised by the Company that the disclosure
2 provisions of Rule 15c2-12 of the Securities and Exchange Commission are not
3 applicable to this transaction inasmuch as the Bond is being sold to the
4 Purchaser, which is an affiliate of the Company, in a private sale without the
5 participation of an underwriter; and

6 WHEREAS, there has been published in the Albuquerque Journal, a
7 newspaper of general circulation in the City, public notice of the Council's
8 intention to adopt this Bond Ordinance, which notice contained certain
9 information concerning the ownership, purpose, location, and size of the Project
10 and the Project Property, and the amount of the Bond to be issued to finance
11 the Project, which notice was published at least fourteen (14) days prior to
12 hearing and final action on this Bond Ordinance; and

13 WHEREAS, the proposed forms of the following documents have been filed
14 with the City Clerk and presented to the Council: (1) Project Plan; (2) Lease; (3)
15 Indenture; and, (4) Bond Purchase Agreement (collectively the "Bond
16 Documents"); and

17 WHEREAS, the City has delivered notice to the County of Bernalillo, State of
18 New Mexico, of its intent to consider issuance of the Bond, which notice was
19 given at least thirty (30) days prior to the meeting at which final action is to be
20 taken on this Bond Ordinance as required by Section 3-32-6.1, New Mexico
21 Statutes Annotated, 1978 Compilation, as amended;

22 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
23 **ALBUQUERQUE:**

24 Section 1. RATIFICATION. All actions not inconsistent with the provisions of
25 this Bond Ordinance previously taken by the Council and the officials of the City
26 directed toward approval of the issuance and sale of the Bond be approved and the
27 same hereby are ratified, approved and confirmed.

28 Section 2. THE PROJECT PLAN. The Project to be financed with the Bond
29 consists of the acquisition, improvement and equipping of facilities for a renewable
30 energy production and storage technology research and development company.
31 The Company may use additional available money to accomplish the Project. The
32 Project Plan is hereby approved in all respects.

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 Section 3. FINDINGS.

2 (A) General. The Council hereby declares that it has considered all
3 relevant information presented to it relating to the Bond and the Project and
4 hereby finds and determines that the issuance of the Bond pursuant to the Bond
5 Ordinance and the Act to provide funds for the Project is necessary and
6 advisable and in the interest of
7 the public, and will promote the public health, safety, morals, convenience,
8 economy, and welfare of the City and the residents of the City.

9 (B) The Council finds that:

- 10 (1) The Bond will be issued for the purpose of financing the Project;
- 11 (2) The aggregate face amount of obligations to be issued for the
12 purpose of financing the Project is \$7,578,000;
- 13 (3) The developer and operator of the Project is the Company; and,
- 14 (4) The Project Property is located in the City.

15 Section 4. AUTHORIZATION AND APPROVAL OF THE BOND. To finance
16 the cost of acquiring the Project Property, the City hereby authorizes and approves
17 the issuance and sale of its industrial revenue bond to be designated "City of
18 Albuquerque, New Mexico Taxable Industrial Revenue Bond (Affordable Solar
19 Project), Series 2021" in a principal amount not to exceed \$7,578,000 and the use of
20 the proceeds of the Bond to finance the cost of the Project and to pay expenses
21 relating thereto.

22 Section 5. SALE OF THE BOND. The sale of the Bond to the Purchaser at a
23 purchase price equal to the par amount of the Bond is hereby authorized and
24 approved.

25 Section 6. FORM AND TERM OF THE BOND. Subject to the limitations set
26 forth in this Bond Ordinance, the Bond shall be: (i) in the form and shall be
27 numbered and dated all as set forth in the Indenture; (ii) payable as to principal and
28 interest, and subject to optional and mandatory redemption and defeasance in the
29 amounts, upon the conditions and at the times and prices set forth in the Indenture;
30 and, (iii) issued in a principal amount not to exceed \$7,578,000, bearing interest at
31 the rates and maturing on the dates set forth in the Indenture. The interest rate on

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 the Bond shall not exceed 12% per annum. The Mayor or the Chief Administrative
2 Officer of the City shall sign the Bond.

3 Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.
4 The form, terms, and provisions of the Bond Documents in the form on deposit
5 in the office of the City Clerk are in all respects approved, authorized, and
6 confirmed, and the City shall enter into such Bond Documents substantially in
7 the form of each such document on deposit with the City Clerk, with only such
8 changes as are not inconsistent with this Bond Ordinance or such other changes
9 as may be approved by supplemental resolution of the Council.

10 (A) The Council authorizes the Mayor or the Chief Administrative Officer
11 of the City to execute and deliver the Bond Documents in the name and on
12 behalf of the City, and the Council authorizes the City Clerk or Deputy City
13 Clerk to attest to, as necessary, the Bond Documents and the Bond with such
14 changes therein as are not inconsistent with this Bond Ordinance.

15 (B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City
16 Treasurer, and City Clerk are further authorized to execute, authenticate, and
17 deliver such certifications, instruments, documents, letters, and other
18 agreements, including security agreements, and to do such other acts and
19 things, either prior to or after the date of delivery of the Bond, as are necessary
20 or appropriate to consummate the transactions contemplated by the Bond
21 Documents.

22 (C) The officers of the City shall take such action as is necessary to
23 effectuate the provisions of the Indenture and shall take such action as is
24 necessary in conformity with the Act and this Bond Ordinance to finance the
25 costs of the Project and for carrying out other transactions as contemplated by
26 this Bond Ordinance and the Bond Documents including, without limitation, the
27 execution and delivery of any closing documents to be delivered in connection
28 with the sale and delivery of the Bond.

29 Section 8. DELIVERY OF THE BOND. Upon the execution of the Bond
30 Documents and the satisfaction of the conditions set forth in the Bond Documents,
31 the Bond shall be executed, authenticated, and delivered to the Purchaser. No

1 Bond shall be valid for any purpose until such Bond has been properly authenticated
 2 as set forth in the Indenture.

3 Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND
 4 INTEREST AND OTHER MATTERS. The Council makes the following
 5 determinations and findings in accordance with the Act:

6 (A) The maximum amount necessary in each year to pay the principal of
 7 and interest on the Bond, assuming issuance of the Bond on or about May 25,
 8 2021 in the amount of \$7,578,000 and bearing interest at the rate of 3% is as
 9 follows:

10	<u>Year Ended</u>	<u>Maturing Principal</u>	<u>Interest Amount</u>	<u>Total Debt Service</u>
11	12/31/22	\$0	\$336,219	\$336,219
12	12/31/23	\$0	504,329	504,329
13	12/31/24	\$0	504,329	504,329
14	12/31/25	\$0	504,329	504,329
15	12/31/26	\$0	504,329	504,329
16	12/31/27	\$0	504,329	504,329
17	12/31/28	\$0	504,329	504,329
18	12/31/29	\$0	504,329	504,329
19	12/31/30	\$0	504,329	504,329
20	12/31/31	\$0	504,329	504,329
21	12/31/32	\$0	504,329	504,329
22	12/31/33	\$0	504,329	504,329
23	12/31/34	\$0	504,329	504,329
24	12/31/35	\$0	504,329	504,329
25	12/31/36	\$0	504,329	504,329
26	12/31/37	\$0	504,329	504,329
27	12/31/38	\$0	504,329	504,329
28	12/31/39	\$0	504,329	504,329
29	12/31/40	\$0	504,329	504,329
30	12/31/41	\$7,578,000	\$504,329	\$7,586,101

[Bracketed/Underscored Material] - New
 [Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 (B) The terms under which the Project Property is leased provide that the
2 Company shall maintain the Project Property and carry all proper insurance (or
3 self-insure) with respect to the Project Property.

4 (C) The lease rentals payable under the Lease shall be at least sufficient to
5 pay the principal and interest payments on the Bond set forth in Paragraph (A)
6 of this Section 9 when due and otherwise render the financing of the acquisition
7 of the Project Property entirely self-liquidating. There shall be no payments to
8 any reserve fund or sinking fund installment payments.

9 Section 10. NONTAXABLE TRANSACTION CERTIFICATES. The Company,
10 as agent for the City, will acquire the Project. The City will cooperate with the
11 Company to obtain and allow use of Type 9 Nontaxable Transaction Certificates
12 (“Certificates”) that have been properly executed for acquisition of tangible personal
13 property relating to the Project as applicable under the New Mexico Gross Receipts
14 and Compensating Tax Act. The Company shall not use the Certificates other than
15 for such things as may be permitted by law, if any, nor shall the Company use such
16 Certificates after the completion of the Project. No costs, expenses or other
17 monetary relief will be recoverable from the City by vendors of equipment.

18 Section 11. LIMITED OBLIGATIONS. The Bond shall be a special limited
19 obligation of the City payable solely from the revenues derived from the Lease and
20 payable by the Company as described in the Indenture, and shall never constitute a
21 debt or indebtedness of the City or the State or any political subdivision thereof
22 within the meaning of any provision or limitation of the State Constitution, statutes, or
23 home-rule charter of the City, and shall not constitute or give rise to a pecuniary
24 liability of the City or a charge against its general credit or taxing power. Nothing
25 contained in the Bond Ordinance or the Bond Documents, or any other instrument,
26 shall be construed as obligating the City (except with respect to the Project Property
27 and the application of the revenues therefrom and the proceeds of the Bond, all as
28 provided in the Bond Documents), nor as incurring a pecuniary liability or charge
29 upon the general credit of the City or against its taxing power, nor shall the breach of
30 any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds,
31 or any other instrument be construed as obligating the City (except with respect to
32 the Project Property and the application of revenues therefrom and the proceeds of

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 the Bond all as provided in the Bond Documents) nor as incurring a pecuniary
2 liability or a charge upon the general credit of the City or against its taxing power, the
3 City having no power to pay out of its general funds, or otherwise contribute any part
4 of the costs of acquiring the Project Property, nor power to operate the Project as a
5 business or in any manner except as lessor and seller of the Project Property.

6 Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
7 approves the provisions of the Lease relating to indemnification which provide that
8 the Company shall indemnify and hold harmless the City and its City Councilors,
9 officials, members, officers, employees, and agents against liability to the Company
10 or to any third parties that may be asserted against the City, its City Councilors,
11 officials, members, officers, employees, and agents with respect to the City's
12 ownership of the Project Property or the issuance of the Bond and arising from the
13 condition of the Project Property or the acquisition or operation of the Project
14 Property by the Company, except to the extent that Section 56-7-1, New Mexico
15 Statutes Annotated, 1978 Compilation, as amended, applies, and except claims for
16 any loss or damage arising out of or resulting from the gross negligence or willful
17 misconduct of the City or any official, member, officer, employee, or agent of the
18 City.

19 Section 13. BOND ORDINANCE IRREPEALABLE. After the Bond is issued,
20 this Bond Ordinance shall be and remain irrevocable until the Bond, including all
21 interest thereon, is fully paid, cancelled, and discharged, or until there has been
22 defeasance of the Bond in accordance with the Indenture.

23 Section 14. SEVERABILITY. If any section, paragraph, clause or provision of
24 this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the
25 invalidity or unenforceability of that section, paragraph, clause, or provision shall not
26 affect any of the remaining provisions of this Bond Ordinance.

27 Section 15. REPEALER. All by-laws, ordinances, resolutions, and orders, or
28 parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond
29 Ordinance but only to the extent of that inconsistency. This repealer shall not be
30 construed to revive any by-law, ordinance, resolution, or order, or part thereof,
31 previously repealed.

32 Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
33 DATE. This Bond Ordinance, immediately upon its final passage and approval, shall

1 be recorded in the ordinance book of the City, kept for that purpose, and shall be
2 there authenticated by the signature of the Mayor and the presiding officer of the
3 City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
4 notice of adoption thereof shall be published once in a newspaper that maintains an
5 office in, and is of general circulation in, the City, and shall be in full force and effect
6 five (5) days following such publication

7 Section 17. GENERAL SUMMARY FOR PUBLICATION. The title and general
8 summary of the subject contained in the Bond Ordinance shall be published in
9 substantially the following form:

10 CITY OF ALBUQUERQUE, NEW MEXICO
11 NOTICE OF ADOPTION OF ORDINANCE

12 Notice is hereby given of the title and of a general summary of the subject matter
13 contained in City Ordinance No. O-21-58 (the "Ordinance"), duly adopted and approved by
14 the City Council of the City of Albuquerque, New Mexico, on April 19, 2021. Complete
15 copies of the Ordinance are available for public inspection during the normal and regular
16 business hours of the City Clerk in the office of the City Clerk, Albuquerque/Bernalillo
17 County Government Center, One Civic Plaza, N.W., Albuquerque, New Mexico.

18 The title of the Ordinance is:
19 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
20 NEW MEXICO INDUSTRIAL REVENUE BOND (AFFORDABLE SOLAR PROJECT)
21 SERIES 2021 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,578,000 TO
22 PROVIDE FUNDS TO FINANCE THE ACQUISITION, RENOVATION,
23 DEVELOPMENT, IMPROVEMENT AND EQUIPPING OF A FACILITY FOR A
24 RENEWABLE ENERGY PRODUCTION AND STORAGE TECHNOLOGY
25 RESEARCH AND DEVELOPMENT COMPANY; AUTHORIZING THE EXECUTION
26 AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE
27 AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE
28 ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN
29 DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE
30 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND
31 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

32 The title sets forth a general summary of the subject matter contained in the
33 Ordinance.

34

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion